

PT 99-58

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS**

COLUMBIA TERRACE NORTH	)	A.H. Docket #	98-PT-77
NEIGHBORHOOD ASSOCIATION, INC.	)	Docket #	98-72-51
Applicant	)		98-72-52, and 98-72-54
v.	)	Parcel Index #	18-05-252-012,
	)		18-05-252-013, and 18-05-253-012
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. David L. Wentworth, II; Hasselberg, Williams, Grebe, and Snodgrass for Columbia Terrace North Neighborhood Association, Inc.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue (hereinafter referred to as the "Department"), Springfield, Illinois on March 17, 1999, to determine whether or not Peoria County Parcel Index Nos. 18-05-252-012, 18-05-252-013, and 18-05-253-012 qualified for exemption during the 1998 assessment year.

Mr. Wayne Nowlan, Director, and Mr. Gaylen Greer, President, of the Columbia Terrace North Neighborhood Association, Inc. (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcels during the 1998 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were used by the applicant for exempt purposes during the 1998

assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned these parcels during all of the 1998 assessment year. It is also determined that the applicant is a charitable organization. Finally, it is determined that the applicant used the three parcels for charitable purposes during the entire 1998 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Peoria County Parcel Index Nos. 18-05-252-012, 18-05-252-013, and 18-05-253-012 did not qualify for a property tax exemption for the 1998 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 7. (Tr. p. 12)

2. On August 3, 1998, the Department received three property tax exemption applications from the Peoria County Board of Review for Permanent Parcel Index Nos. 18-05-252-012, 18-05-252-013, and 18-05-253-012. The applicant had submitted the requests, and the board recommended granting full year exemptions for the 1998 assessment year. The Department assigned Docket Nos. 98-72-51, 98-72-52, and 98-72-54 to the applications. (Dept. Grp. Ex. Nos. 2, 3, & 4)

3. On November 19, 1998, the Department denied the requested exemption applications, finding that the properties were not in exempt use. (Dept. Grp. Ex. No. 5)

4. The applicant timely protested the denial of the exemptions and requested a hearing in the matter. (Dept. Ex. No. 6)

5. The hearing at the Department's offices in Springfield, Illinois on March 17, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant was incorporated under the General Not-For-Profit Corporation Act of the State of Illinois on July 21, 1996, with a purpose clause stating:

The purpose of the association shall be to maintain as a desirable residential district for the mutual benefit of the residents thereof, the area covered by the association, which boundaries are University Street, Columbia Terrace, Sheridan Road, and I-74; to inform members of helpful ideas regarding

neighborhood betterment; hold neighborhood social gatherings on occasion; support and encourage neighborhood watch areas; and to receive and distribute funds to carry out said objectives. (Dept. Grp. Ex. No. 2 pp. 6-7)

7. The applicant is exempt from the payment of federal Income Tax pursuant to a 501 (c)(3) designation granted by the Internal Revenue Service on July 29, 1997. (Dept. Grp. Ex. No. 2 pp. 8-11)

8. Article III §4 of applicant's by-laws states that "[T]here shall be no required dues but a suggested \$5.00 per household contribution." (Dept. Ex. No. 2 p. 14)

9. Applicant's ledger for 1998 shows income from donations, dues, the "Grand Tour Committee¹," and an indecipherable City of Peoria fund for total income of \$871.36. Dues are a requested donation to help support the newsletters and other functions that the applicant has. The ledger does not include any grant money that was administered directly when it was awarded to the applicant. (Applicant's Ex. No. 8; Tr. p. 16)

10. The applicant acquired the subject parcels by a Quit Claim Deed dated August 22, 1997. The parcels were a gift. (Dept. Grp Ex. No. 2 pp. 3-4; Tr. p. 32)

11. The parcels are three contiguous vacant lots. The three, plus an additional lot that is not at issue, have been converted into Dayspring Community Park. Dayspring Community Park is a 3-acre park located at 1427 Bourland Road, Peoria, Illinois. The sole assets of the applicant are the properties and the park equipment. (Dept. Grp. Ex. No. 2 pp. 5, 22-24, 26; Applicant's Ex. Nos. 12B & 18; Tr. pp. 27-28, 39, 46, 84-85)

12. There are no restrictions as to who can use the park; it is open to the public. No fees are charged for the use of the park. (Tr. pp. 26, 75-76)

13. The applicant received a grant through the City of Peoria and the Department of Housing and Urban Development for playground equipment for the park. The grant required that the equipment meet the Americans with Disabilities Act guidelines. The grant gave the

¹ The applicant explained that the Grand Tour of Homes is an opportunity for neighborhoods to request funding to help support themselves through a fund raiser that the West Bluff of Peoria Grand Tour of Homes puts forth. A grant application is submitted each year. In 1998, the applicant received \$570.00 from the Grand Tour Committee. (Tr. pp. 17-19, 45)

applicant \$10,000.00 to improve the park. The grant consisted of \$8,000.00 for playground equipment and \$2,000 for the picnic shelter. The direct-pay grant was approved in May, 1998 with the monies available in June, 1998. The grant paid the monies directly to Peoria Lowe's Home Center Inc. for the use of the applicant in purchasing the materials to build the improvements. The applicant received an additional \$10,000.00 grant in 1999 for additional park equipment. (Applicant's Ex. Nos. 17 & 24; Tr. pp. 34-37, 74-75)

14. The applicant had to submit a zoning variance to the city for the park construction. The zoning variance was done by Ordinance No. 14,530, which was passed by the City Council of Peoria and approved by the Mayor on July 21, 1998. (Applicant's Ex. No. 23; Tr. pp. 42-44)

15. Most of applicant's work is done by volunteer labor. In 1998 they contacted the Illinois Air National Guard and the Peoria Fire Department for help with the construction of the playground and the picnic shelter on the subject parcels. Those entities donated at least 244 hours of volunteer time for the construction of the playground and picnic shelter during the first week of August 1998. (Applicant's Ex. Nos. 10B, 11, 13, & 22; Tr. pp. 31-32, 63-67)

16. The property and improvements were dedicated at a ceremony held at Dayspring Community Park on September 12, 1998. (Applicant's Ex. Nos. 13F & 21; Tr. pp. 40-42; 67)

17. The applicant has sponsored a neighborhood clean-up day and neighborhood picnics where the food was donated by businesses and neighbors. Applicant scheduled its May, June, July and August meetings in the park, but weather forced two of those events inside. (Applicant's Ex. No. 19; Tr. pp. 29-30, 38)

18. The applicant is also involved in the Franklin School Neighborhood Partnership. The partnership is comprised of four neighborhoods that are all centered around Franklin Primary School. Franklin Primary School is the elementary school for the area. During the 1997-98 school year, the Franklin School Neighborhood Partnership received a \$55,000.00 grant per year for five years for improvement of the neighborhoods. (Applicant's Ex. Nos. 5, 6, 7, 14; Tr. p. 69-71)

19. The 1997-1998 public school report card for Peoria, Illinois showed that more than 80% of the families in the Franklin School neighborhood are low-income families. (Applicant's Ex. Nos. 6 & 7; Tr. pp. 52-58)

20. The playground at Franklin Primary School contains no grass or trees. It is made of asphalt. (Applicant's Ex. No. 16; Tr. p. 73)

21. The students at Franklin Primary School plan to, or have used the park for picnics; a park safari; an opportunity to measure trees and develop math skills; as an area to develop parent-child relationships; for social interaction programs; and for physical education. (Applicant's Ex. No. 15; Tr. p. 71-74)

22. There are no restrictions on applicant's membership. Anyone who wants to can join the applicant. (Tr. pp. 46-47)

23. The applicant and its members provide charitable, social, and educational programs and assistance at no cost to persons and groups who ask for or need the applicant's help. (Applicant's Ex. No. 18; Tr. pp. 77-80)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 157 (1968) (hereinafter "Methodist Old People's Home").

Based upon the fact that the applicant was incorporated under the Illinois General Not-for-Profit Corporation Act and is exempt from the payment of Federal Income Tax, I find that the applicant has established that it has no capital, capital stock, or shareholders and does not profit from the enterprise. In view of the fact that the park and other amenities located on the subject parcels are open and available to anyone who wants to use them at no cost, I conclude that the benefits are for an indefinite number of persons, that charity is dispensed to all who need and apply for it, and that no obstacles are placed in the way of those seeking the benefits. I also conclude that the funds of the applicant are derived from public and private charity, and are held for the objects and purposes expressed in its charter.

In the case of Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988) the court held, after applying the Methodist Old People's Home guidelines that an organization which owned and operated athletic fields for recreational purposes qualified for

an exemption as a charitable organization. I therefore conclude that the applicant qualifies for an exemption as a charitable organization which during all of 1998 owned these parcels and used them as a park and playground available to anyone who wished to use them.

It is therefore recommended that Peoria County Permanent Parcel Index Nos. 18-05-252-012, 18-05-252-013, and 18-05-253-012 be exempt from real estate taxation for the 1998 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
October 15, 1999